IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REV.APPLICATION NO.193 OF 1997

Prakash Sapre .. Applicant
Versus
Vera Sudarashan Sharma & Anr. .. Respondents

Mr.Pradhan with R.S.Mhamane for applicant
Ms.Rajeshree Gadhavi, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 12th October 2006.

P.C.

. This application is for quashing and setting aside not only the order dated 24th July 1997 passed in Criminal Case No.23/S/94 by the learned Metropolitan Magistrate, Borivali, Mumbai but to quash and set aside the entire proceedings.

2. Petition was admitted by this Court on

9th September 1997. The stay was granted in terms of prayer clause (e). The effect was that the proceedings were stayed during the pendency of this revision application.

3. The revision application was placed for hearing and final disposal before me and it was informed by the petitioner's Senior Counsel Mr.Pradhan that respondent No.1 original complainant has expired. She is wife of one Sudarshan Sharma. He was the original complainant and after his death, his wife was substituted.

4. After this petition was admitted and notices came to be issued, appearance was filed on behalf of the first respondent by two Advocates but none appeared on the last occasion as well as today.

5. In such circumstances, I gave liberty to

the petitioner to place an affidavit on record which would demonstrate that the first respondent has expired.

6. Apart from the petitioner's affidavit, an affidavit has been filed by Mr.Gajanan Bhagwan Ved Pathak. in this affidavit he has mentioned that he knew Mr.Sudarshan Sharma, husband of first respondent. The deponent of the affidavit also resides in Goregaon and he has stated on oath that first respondent was residing in the premises of her husband and she is no more. He has stated that he made personal enquiries with daughter and nephew of late Sudarshan Sharma and they informed the deponent that his widow was no longer alive. However, they were now able to inform exact date of her death.

7. From a perusal of the complaint so also the order passed by the Metropolitan Magistrate, it is apparent that on account of disputes the

late Sudarshan Sharma had with the petitioner, with regard to development of a property at Goregaon, said complaint came to be filed. The case is that first respondent husband had not affixed his signature on a form prescribed under section 337 of B.M.C. Act seeking approval of a plan for construction.

8. In the light of the fact that none has come forward to apply for all these years for vacating interim order nor has anybody come forward to prosecute the petition and further I am having informed that the first respondent also has expired, in the peculiar facts and circumstances of this case, the order as well as proceedings in Complaint case No.23S/94 are quashed and set aside. Rule is made absolute accordingly.

(S.C.Dharmadhikari, J)